IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 367 of 2001

(Old No. 5780/2000)

Date of decision:- 17/06/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 17/6/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.367 of 2001.
(Old No.5780/2000)

Dr. P.N. Ram son of Sri Ram Karan, presently posted at Block Development Officer, Noorpur, Bijnor, resident of Mohalla Maidapur, P.S. Ghosi, district Mau.

.....Applicant.

Versus

State of U.P.
K.B.Singh, Assistant Engineer, Rural Engineering Service, Uttarkashi

...Respondents.

Sri S.N. Singh Sri Dinesh Chauhan & Sri Sudhir Kumar learned counsel for the applicant.
Learned A.G.A. for respondents.

Dated: 17.06.2006

HON'BLE J. C. S. RAWAT, J.

1. This is a petition under section 482 Cr.P.C. to quash the charge sheet No.2 of 1994 in case No.1 of 1993 under sections 408,409,467 and 468 IPC, P.S. Jakhor, district Uttar Kashi.

2. The brief facts for the disposal of this petition are that the applicant was posted in the year 1992 at Block Nanai Mori, district Uttar Kashi as Block Development Officer. It is alleged that in the year 1992-93, a scheme was initiated for the construction of the road in particular area under Jawahar Rozgar Yojna in Jakhor, tehsil Purola, district Uttarkashi. The scheme started on 16.09.1992 in connection of the same, the

measurements were made by the Junior Engineer concerned and also prepared muster roll by the village Development Officer and the same was also approved by the Gram Pradhan of the concerned Panchayat and after completing the full formalities and measurements the bill was produced for the first running payment before the applicant. The applicant passed the running bills being the drawing and disbursing Officer for the same. It is also alleged that on 02.11.1992 a joint inspection was made by Sri Amit Jain- I.A.S., sri R. Rajwar- Assistant Engineer, Sri K.B. Singh- Assistant Engineer, Sri Ved Prakash- Junior Engineer, the Gram Pradhan and Sri D.D.Raturi, Junior Engineer. It is alleged in the inspection report that the work was sub standard and it was also alleged that the quality of the work was also not upto the mark and the work which has been said to be completed was not complete in the measurements. It was further alleged that the work at the spot and the measurements recorded and verified by different authorities does not tally. It was also alleged that they have misappropriated the amount of money which was granted for the said purpose. The FIR was lodged on the basis of this report and the impugned

charge sheet was submitted against the present applicant also.

3. The learned counsel for the applicant contended that there is no evidence against the applicant for being summoned in the said case. It was further contended that departmental enquiry was conducted in which two Officers or officials were held liable and the money amounting to Rs.24,000/- was recovered and the present applicant was exonerated from the said enquiry. It was further contended that the ingredients of the offence under sections 408, 409, 467 and 468 IPC are not made out.

4. The learned counsel for the state contended that there is a prima-facie case against the applicant. The statement of informant K.B.Singh was recorded under section 161 Cr.P.C. He had stated that neither he had lodged the FIR nor he had prepared any inspection report separately. He had also stated that he had not made any counter measurements at the spot. The police also recorded the statement of Sri R. Rajwar who had stated that neither he had prepared counter measurement report nor he had measured the said work. The charge sheet was submitted before the

Magistrate and the Magistrate has taken the cognizance on 20.11.1998.

5. The perusal of the statement filed by the applicant reveals that cognizance order is bad in law. The Magistrate should have asked the police to further investigate the matter. It was also revealed that the statement of Sri Amit Jain has not been recorded. The statement of other witnesses should have been recorded. It is also clear from the statement of the Assistant Engineer K.B. Singh that he is conniving with the accused. He has lodged the report but before the police he had said that he had not lodged the report and he had also stated before the police as to how the F.I.R. was lodged. The statement recorded under section 161 Cr.P.C. itself falsifies his stand. The learned Magistrate will go through the entire charge sheet and thereafter he will point out the points to be further investigated and thereafter he may send the matter for further investigation. In case the matter is referred for further investigation, the State will consider that the case may be further investigated by any other agency than the regular police.

6. In view of the foregoing discussion I am of the view that the cognizance order passed by the

learned Magistrate is bad in law and is liable to be quashed. The cognizance order dated 20.11.1998 is quashed and the matter is remitted back to the learned Magistrate to dispose of the matter in the light of the observations made above.

7. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

17.06.2006
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